

OECA and Regional Report

Week Ending September 16, 2016

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Ex. 7(A) and unrelated matter

- **State Court Denies ARCO's Motion for Summary Judgment and Grants Plaintiffs' Motion for Summary Judgment on Claims for Restoration Damages - Anaconda Smelter Superfund Site, MT**

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Non-confidential items:

State Court Denies ARCO's Motion for Summary Judgment and Grants Plaintiffs' Motion for Summary Judgment on Claims for Restoration Damages - Anaconda Smelter Superfund Site, MT

On August 30th, 2016, the Montana State District Court (State Court), issued a ruling in favor of landowners seeking restoration damages under Montana State law, for the Anaconda Superfund Site in, *Gregory Christian, et al v. Atlantic Richfield Company*, Cause No. DV-08-173 (Montana Second Judicial District Court, Silver Bow County). The State Court granted landowners' cross-motion for summary judgment (MSJ) and denied Atlantic Richfield Company's (ARCO) MSJ seeking dismissal of landowners' claims for restoration damages under state law as barred by CERCLA Section 113(h) and CERCLA Section 122(e)(6).

On May 19, 2016, the Department of Justice on behalf of EPA filed an *amicus curiae* brief in this case, in support of defendant ARCO. An extensive and complicated CERCLA cleanup under EPA's direction is being performed by ARCO at the Anaconda Smelter Superfund Site (the Anaconda Site) in Montana pursuant. The *amicus* brief supported ARCO's position that landowners' claims for property restoration damages under state law are barred by sections 113(h) and 122(e)(6) of CERCLA. Plaintiff landowners are a group of individuals who own residential real property within the Anaconda Site. They are claiming damages for loss of use,

enjoyment and value of their property. The proposed restoration claims would allow landowners to have ARCO perform actions that EPA believes may harm or interfere with the remedy selected under EPA's record of decision for the Anaconda Site.

In granting the landowners' MSJ and denying ARCO's MSJ the court did not reference, cite or mention EPA's amicus brief. The State Court ruled the landowners' proposed restoration is not barred by CERCLA Section 113 (h) because it does not challenge EPA's remedy, is not inconsistent with EPA's selected remedy and will not harm or interfere with the remedy selected for the Anaconda Site. The State Court also said the landowners had not been designated as PRPS and ARCO failed to carry its burden to demonstrate the absence of genuine issues of material fact as to whether the restoration claims were in conflict with the selected remedy, that CERCLA Section 122 (e)(6) did not prohibit their proposed actions for the Site. OECA/OSRE will discuss with Region 8, OGC and DOJ possible next steps in this case. Contact: Clarence Featherson, 202-564-4234.

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